with respect to, purchases of investment securities (12 U.S.C. 24, 335), investments in bank premises (12 U.S.C. 371d), loans on stock or bond collateral (12 U.S.C. 248(m)), deposits with nonmember banks (12 U.S.C. 463), and bank acceptances (12 U.S.C. 372, 373), as well as provisions that limit the amount of paper of one borrower that may be discounted by a Federal Reserve Bank for any member bank (12 U.S.C. 84, 330, 345).

(12 U.S.C. 24, 84, 248, 321, 330, 335, 345, 371c, 371d, 372, 373, 463)

[33 FR 9866, July 10, 1968, as amended at 61 FR 19806, May 3, 1996]

### § 250.162 Undivided profits as "capital stock and surplus".

(a) The Board of Governors has reexamined the question whether a member bank's undivided profits may be considered as part of its *capital stock and surplus*, as that or a similar term is used in provisions of the Federal Reserve Act that limit member banks with respect to the following: Purchases of investment securities (12 U.S.C. 335), loans on stock or bond collateral (12 U.S.C. 248(m)), deposits with nonmember banks (12 U.S.C. 463), bank acceptances (12 U.S.C. 372, 373), investments in and by Edge and Agreement corporations (12 U.S.C. 601, 615, 618), and the amount of paper of one borrower that may be discounted or accepted as collateral for an advance by a Federal Reserve Bank (12 U.S.C. 330, 345, 347).

(b) Upon such reexamination the Board concludes that its negative view expressed in 1964 is unnecessarily restrictive in the light of the Congressional purpose in establishing limitations on bank activities in terms of a bank's capital structure. Accordingly, the Board has decided that, for the purposes of the limitations set forth above, undivided profits may be included as part of *capital stock and surplus*.

(c) As used herein, the term *undivided profits* includes paid-in or earned profits (unearned income must be deducted); reserves for loan losses or bad debts, less the amount of tax which would become payable with respect to the tax-free portion of the reserve if such portion were transferred from the reserve; valuation reserves for securities; and reserves for contingencies. It does not include reserves for dividends declared or reserves for taxes, interest and expenses.

(Interprets and applies 12 U.S.C. 24, 84, 330, 335, 345, 347, 371c, 372, 373, 464, 601, 615, 618)

[36 FR 5673, Mar. 26, 1971, as amended at 61 FR 19806, May 3, 1996]

### § 250.163 Inapplicability of amount limitations to "ineligible acceptances."

(a) Since 1923, the Board has been of the view that ''the acceptance power of State member banks is not necessarily confined to the provisions of section 13 (of the Federal Reserve Act), inasmuch as the laws of many States confer broader acceptance powers upon their State banks, and certain State member banks may, therefore, legally make acceptances of kinds which are not eligible for rediscount, but which may be eligible for purchase by Federal reserve banks under section 14.'' 1923 FR bulletin 316, 317.

(b) In 1963, the Comptroller of the Currency ruled that ''[n]ational banks are not limited in the character of acceptances which they may make in financing credit transactions, and bankers' acceptances may be used for such purpose, since the making of acceptances is an essential part of banking authorized by 12 U.S.C. 24.'' *Comptroller's manual* 7.7420. Therefore, national banks are authorized by the Comptroller to make acceptances under 12 U.S.C. 24, although the acceptances are not the type described in section 13 of the Federal Reserve Act.

(c) A review of the legislative history surrounding the enactment of the acceptance provisions of section 13, reveals that Congress believed in 1913, that it was granting to national banks a power which they would not otherwise possess and had not previously possessed. See remarks of Congressmen Phelan, Helvering, Saunders, and Glass, 51 *Cong. Rec.* 4676, 4798, 4885, and 5064 (September 10, 12, 13, and 17 of 1913). Nevertheless, the courts have long recognized the evolutionary nature of banking and of the scope of the ''incidental powers'' clause of 12 U.S.C. 24. See *Merchants Bank* v. *State Bank*, 77 U.S. 604 (1870) (upholding the power of a national bank to certify a check under